

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of

Docket No.: P26871

W. BLACKWELL, *et al.*

Confirmation No.: 9978

Serial No.: 10/602,711

Group Art Unit: No. 3652

Filed: June 25, 2003

Examiner: G. W. Adams

For: **METHOD AND APPARATUS TO EFFECTUATE AUTOMATED
POSITIONING AND LOADING OF VARIABLE SIZED CONTAINERS**

REPLY BRIEF UNDER 37 C.F.R. 41.41(a)(1)

Commissioner for Patents
U.S. Patent and Trademark Office
Customer Service Window, Mail Stop **Appeal Brief - Patents**
Randolph Building
401 Dulany Street
Alexandria, VA 22314
Sir:

This Reply Brief is in response to the Examiner's Answer dated June 11, 2007, the period for reply extending until August 13, 2007 (August 11, 2007 being a Saturday).

The Examiner maintains the grounds of rejection advanced in the final rejection of claims 1-26, and provides arguments in support thereof.

Appellant notes this Reply Brief is being filed under 37 C.F.R. 41.41(a)(1) and is directed to the arguments presented in the Examiner's Answer, and therefore must be entered unless the final rejection is withdrawn in response to the instant Reply Brief. With regard to this Reply Brief, Appellant notes it is addressing points made in the Examiner's Answer and not repeating the arguments set forth in the Appeal Brief.

POINTS OF ARGUMENT**First Issue**

On pages 6 and 7 of the Examiner's Answer, the Examiner indicates that the Section 112, 2nd paragraph, rejection of claim 2 is withdrawn.

Appellant acknowledges the withdrawal of this rejection, and withdraws the arguments presented in the Appeal Brief in response to this rejection.

Second Issue

On pages 7-9 of the Examiner's Answer, the Examiner purports to identify all of the claim features and purports to identify where in the applied documents there can be found language which discloses or suggests each recited feature of the claims. Appellant notes that the Examiner has not listed the actual recited claim features and has merely paraphrased the recited features. As such, Appellant submits that the Examiner has not properly and fully considered each and every recited feature of the claims. For example, on page 7, the Examiner characterizes the feature "an induction mechanism that introduces packages onto a transporting system which transports the packages from the induction mechanism to a plurality of drop off positions" of claim 17 as an "induction mechanism".

As such, Appellant submits that the Examiner has not made a proper *prima facie* case of unpatentability.

Third Issue

On pages 9 and 10 of the Examiner's Answer, the Examiner maintains that the sensor 130 of WILDE is properly interpreted as the recited sensor that detects whether the bucket assembly has reached a fill capacity at each of the upright position, the intermediate tilt position and the full tilt position. Appellant respectfully disagrees.

The so-called sensor 130 of WILDE does not detect whether the bucket assembly has reached a fill capacity at each of the upright position, the intermediate tilt position and the full tilt position. Col. 6, line 33 to col. 7, line 26 of WILDE specifically explains that the initial movement of the container support 14 is controlled by an operator. Thereafter, the filling takes place under the influence of the back-up sensor 130 which detects back-up of the parts on the discharge end 75 of a discharge section 18. Such language is hardly suggestive of the sensor 130 detecting when a bucket assembly is full at each of a first tilt position, an intermediate tilt position and an upright position. Instead, such language is suggestive of detecting back-up of the parts on the discharge end 75 of a discharge section 18.

Fourth Issue

On pages 9 and 10 of the Examiner's Answer, the Examiner explains that the term "fill capacity" can be interpreted as filling a contained to a predetermined (incorrectly indicated by the Examiner as prescribed) limit or until it physically cannot hold more items.

First, Appellant submits that the fill capacity is defined in the specification. For example, the specification clearly notes at paragraph [0027], that the fill capacity is a filled container. Such language would clearly be understood by those of skill in the art, in view of the specification.

Second, Appellant does dispute that the Examiner may interpret this term in a broad manner. However, this does not change the fact that the sensor 130 of WILDE does not detect whether the bucket assembly has reached a fill capacity at each of the upright position, the intermediate tilt position and the full tilt position. As explained above, col. 6, line 33 to col. 7, line 26 of WILDE specifically explains that the sensor 130 is a back-up sensor which detects back-up of the parts on the discharge end 75 of a discharge section 18. There is no language in WILDE even remotely suggesting that the sensor 130 detects when a bucket assembly is full at each of a first tilt position, an intermediate tilt position and an upright position.

Fifth Issue

On pages 11 and 12 of the Examiner's Answer, the Examiner explains that it is irrelevant that WILDE teaches that the initial movement of the container support 14 is controlled by an operator because Appellant has not defined any particular angle of orientation.

Appellant does not dispute that the Examiner may broadly construe the terms upright position, intermediate tilt position and full tilt position. However, the Examiner

must construe these terms in the context of the claim language, i.e., in the context of describing the recited sensor.

Claim 1, for example, recites that the sensor detects whether the bucket assembly has reached a fill capacity at each of the upright position, the intermediate tilt position and the full tilt position. On the other hand, the sensor 130 of WILDE is merely a back-up sensor which detects back-up of the parts on the discharge end 75 of a discharge section 18. As such, the sensor 130 of WILDE simply cannot be properly interpreted as the recited sensor that detects whether the bucket assembly has reached a fill capacity at each of the upright position, the intermediate tilt position and the full tilt position.

Again, col. 6, line 33 to col. 7, line 26 of WILDE specifically explains that the initial movement of the container support 14 is controlled by an operator. Thereafter, the filling takes place under the influence of the back-up sensor which detects back-up of the parts on the discharge end 75 of a discharge section 18. Such language is hardly suggestive of the sensor 130 detecting when a bucket assembly is full at each of a first tilt position, an intermediate tilt position and an upright position.

Sixth Issue

On page 12 of the Examiner's Answer, the Examiner explains that the sensor(s) 156, 158 of WILDE is properly interpreted as the recited safety sensor of claim 5. Appellant disagrees.

Col. 6 of WILDE specifically describes the so-called sensor 156 as a limit switch

that shuts down the conveyor when the limit switch is contacted. More specifically, WILDE discloses that the adjustable limit switch 156 (FIG. 2) is mounted (on one vertical leg 32) so as to be movable out into the path of container support 14 and contact one sidewall 54. The limit switch 156 is connected in the circuit with controls 154, so that when adjustable limit switch 156 is contacted conveyor 16 is shut down and container support 14 is lowered to the fully lowered position (FIG. 3). However, the limit switch 156 clearly does not shut down the system upon a detection of a problem. In fact, such disclosure is hardly suggestive of a safety sensor associated with the actuator assembly to ensure shut down of the actuator assembly based on a detected problem.

Col. 6 also clearly discloses that the so-called sensor 158 is a limit switch positioned to be contacted by the container support when it is fully lowered. The limit switch 158 is connected in a circuit with controls 154, so that when fixed limit switch 158 is contacted cylinder 66 is shut off and the lowering of container support 14 stops. Again, this is not suggestive, nor does it teach, a safety sensor associated with the actuator assembly to ensure shut down of the actuator assembly based on a detected problem. Limit switch 158 merely determines that a container is in a lowered position.

Seventh Issue

On page 12 of the Examiner's Answer, the Examiner explains that the sensor 130 of WILDE is also properly interpreted as the recited chute sensor of claim 8. Appellant disagrees.

First, this assertion ignores the fact that the recited chute sensor of claim 8 is an additional sensor to the so-called fill capacity sensor of claim 1. The sensor 130 of

WILDE cannot be both of the recited fill capacity sensor of claim 1 and the chute sensor of claim 8.

Specifically, Appellant emphasizes that claim 1 requires a sensor that detects when a bucket assembly is full at each of a first tilt position, an intermediate tilt position and an upright position. Furthermore, claim 8 additionally recites a chute sensor which detects package or mail object backlog within the chute upstream from the bucket assembly. As such, the sensor of claim 8 is different than the sensor of claim 1. Contrary to the claimed invention, the single sensor 130 of WILDE simply has not been shown to perform either of the features of claims 1 and 8, much less, both of these features.

Again, the so-called sensor 130 in WILDE does not detect whether the bucket assembly has reached a fill capacity at each of the upright position, the intermediate tilt position and the full tilt position, and is not a chute sensor which detects package or mail object backlog within the chute upstream from the bucket assembly. To the contrary, col. 5, lines 45-50 of WILDE discloses that the sensor 130 is “[a] parts back-up sensor” which is “located on discharge section 18”. The disclosed sensor 130 merely detects “the back-up of parts at the discharge end 75.” This is simply not a fill capacity sensor or a chute sensor, as recited in the claimed invention.

Eighth Issue

On pages 13 and 14 of the Examiner’s Answer, the Examiner asserts that sensor 130 of WILDE constitutes the recited module which detects when a container is full at a

first tilt position, an intermediate tilt position and an upright position, that limit switch 210 constitutes the recited module which detects a position of the container, and that master control and power circuit 201 constitutes the recited module which controls a movement of the container based at least on a capacity of the container.

There is no prior art support for these assertions. As explained above, sensor 130 of WILDE is merely a back-up sensor which detects back-up of the parts on the discharge end 75 of a discharge section 18. There is no language in WILDE which even remotely describes the sensor 130 as being capable of detecting when a container is full at a first tilt position, an intermediate tilt position and an upright position. Moreover, col. 8, lines 33-35 of WILDE describes limit switch 210 as a maximum tilt or raised position limit switch for container support 14 and not as something which can detect a position of the container. Finally, WILDE contains no language even remotely discussing whether the power circuit 201 is capable of controlling a movement of the container based at least on a capacity of the container.

Ninth Issue

On pages 14 and 15 of the Examiner's Answer, the asserts that sensors 66 and 67 of HERRIN constitute the recited sensor that determines whether any container is properly positioned. Appellant disagrees.

Even if HERRIN were properly combinable with WILDE (which Appellant disputes), the sensors 66 and 67 of HERRIN are disclosed in HERRIN as sensing "the entering and exiting of containers C" through "the container holder" (see col. 6, lines 56-

60). This is simply not the same as sensing the proper positioning of a container and the Examiner has not demonstrated otherwise.

Tenth Issue

Throughout the Examiner's Answer, the Examiner makes various assertions which appear to be based on an argument of inherency. Appellant submits that such assertions are not consistent with MPEP 2112, which specifically states, in part:

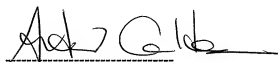
"In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original) (Applicant's invention was directed to a biaxially oriented, flexible dilation catheter balloon (a tube which expands upon inflation) used, for example, in clearing the blood vessels of heart patients). The examiner applied a U.S. patent to Schjeldahl which disclosed injection molding a tubular preform and then injecting air into the preform to expand it against a mold (blow molding). The reference did not directly state that the end product balloon was biaxially oriented. It did disclose that the balloon was "formed from a thin flexible inelastic, high tensile strength, biaxially oriented synthetic plastic material." *Id.* at 1462 (emphasis in original). The examiner argued that Schjeldahl's balloon was inherently biaxially oriented. The Board reversed on the basis that the examiner did not provide objective evidence or cogent technical reasoning to support the conclusion of inherency.).

The Examiner has provided no basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.

CONCLUSION

Accordingly, in view of the above-noted arguments (as well as those already of record), the Board is respectfully requested to reverse the Examiner's decision to finally reject claims 1-26 under 35 U.S.C. §§ 102 and 103. Furthermore, the application should be remanded to the Examiner for withdrawal of the rejection over the applied documents and an early allowance of all claims on appeal should be provided. The Commissioner is hereby authorized to charge any fees necessary for consideration of this paper to deposit account No. 19-0089.

Respectfully submitted,
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A handwritten signature in black ink, appearing to read 'Andrew M. Calderon', written over a horizontal dashed line.

Andrew M. Calderon
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August 13, 2007
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